# Dissenting Report by the Australian Greens

## Introduction

The Commonwealth Government's approach to the problems facing Indigenous communities in the Northern Territory, including the three Bills being considered by this Committee, is fundamentally flawed.

These three Bills are less about protecting children and more about implementing a previously developed ideological agenda to once again control the lives of Indigenous people and to restructure Australia's welfare system.

If the Government was genuine about protecting children it would be listening to the experts and implementing the recommendations from the *Little Children are Sacred* report and the other reports on child abuse in Indigenous communities released over the last decade. Instead the Government has ignored this expertise and rushed ahead with implementing a flawed agenda without any evidence of its likely efficacy.

These Bills represent the most significant changes to the relationship between governments and Indigenous people since the 1967 Referendum. They are a deliberate and calculated move away from efforts to build the capacity of Aboriginal communities, and a return to complete central government control over every aspect of the lives of Aboriginal Australians. As the Central Land Council submits, "The intervention also means that almost every aspect of Aboriginal life will be able to be controlled by the Commonwealth."[1]

To succeed in the long-term it is absolutely essential to have genuine community engagement and ownership of programs and initiatives addressing child abuse and the causes of child abuse.

Community consultation is the first recommendation of the *Little Children are Sacred* report and one of the key criticisms of the approach taken by the Federal Government is that they have failed to consult and failed to learn from the past. The Government has attempted to justify their lack of consultation by saying there has been consultation in the past, but there has been no consultation on the intervention measures.

Andrew Johnson (an expert in international child protection and former consultant to UNICEF and UNHCR on emergency interventions) provided the Committee with a useful comparison with how the UN would respond to an emergency situation:

> "In an emergency setting, the first thing a UN agency would do, under the direction of OCHA, is to ensure proper consultation on the ground. That is done within the first 24 to 48 hours and it is quite extensive. They then sit down with the communities to find out what supports and services they need. They set up safe houses and ensure that there are safe places for children to

[1] Submission by Central Land Council, Submission No. 84, p.2.

> play. The international community ensures that there is safe and proper housing, water and access to medical services. The international community is able to do things quite quickly in a refugee camp, and that is based on consultation and asking the population themselves what they need. The biggest lesson learnt from all interventions internationally is that they always fail when they do not involve and empower the local communities to take part in the interventions that are taking place. If you look across the world at the operations that have been successful in resource-poor communities, the fundamental thing that crosses through all those interventions has been the giving of ownership, empowerment and control to the people themselves to ensure children are protected and families and communities are safe."[2]

The Australian Greens want to see a more considered and comprehensive response leading to the development of evidence-based policy that builds on existing knowledge of successful programs to deliver long-term solutions that strengthen and empower communities.

There already exists clear information about what governments (Territory, State and Federal) should be doing to address child sexual abuse in Indigenous communities. In the past decade there have been a large number of reports from across the country, in addition to the *Little Children are Sacred* Report, which outline practical and proven measures to tackle this issue. There is also a body of knowledge arising from case-studies and pilot programs of a range of community programs both within Australian Indigenous communities and around the world of what type of interventions have proved successful and what obstacles have been encountered in trying to deal with child safety and well-being.

The federal government's response ignores all of these recommendations. The authors of the *Little Children are Sacred* Report have publicly stated that that Government's measures, including these Bills, do not deliver on their Report.

The Emergency Response and Development Plan to protect Aboriginal Children put forward by the Combined Aboriginal Organisations of the Northern Territory on 10 July 2007 outlines a comprehensive two-phase approach to this issue which the Australian Greens endorse. This plan is attached to Oxfam's submission (Number 51).

**The Australian Greens are calling on the Federal Government to put aside its current intervention strategy and enter into a partnership with Aboriginal communities to deliver a comprehensive and considered proposal.**

The Australian Greens believe that strategies and programs must ensure:

**child protection**

- Safe communities through adequate and appropriate policing and more resources to support safe houses, night patrols and Aboriginal community police and community-based family violence programs.

[2] Hansard, p. 62.

**health**

- Healthy kids and healthy families through increased resources and infrastructure to provide primary health and wellbeing services
- Urgent investment to reduce the gap in life expectancy and rates of chronic disease within a generation as part of a national Indigenous health strategy (a commitment of $500M/yr)
- Significant investment in programs to reduce alcohol and other substance abuse which includes education and demand-reduction strategies as well as rehabilitation and counselling services as part of a national strategy

**housing and infrastructure**

- Sufficient housing to reduce overcrowding and increase child health and safety ($2-3 billion nationally over ten years)
- Genuine employment opportunities providing community-based health, education and welfare services as well as housing and infrastructure maintenance and construction

**education & training**

- Delivery of quality education to all Aboriginal children, with a focus on early childhood development and with school attendance strategies that encourage family engagement (an extra $295 million for infrastructure plus $79 million a year is needed if all children in the Northern Territory attend school)

**partnership and governance**

- A human rights approach to partnering with communities in developing policies and programs
- Financial management education and services, and support for voluntary community-based financial management initiatives (such as Tangentyere's successful Centrecare scheme)

These are the matters that the government is not addressing and which are vital to protecting children and ensuring viable functional communities.

**Legislative process**

The Greens agree with the Law Council of Australia's condemnation of:

> "the timetable for considering this proposed legislation as disgracefully inadequate and an affront to fundamental democratic principles."[3]

The legislation presented to the Parliament is detailed, complex and of major significance. The Government's indecent haste to push the legislation through the Parliament is unjustifiable. The shortness of time given for this Committee to consider the Bills is unconscionable. This Government is showing great contempt for the Parliament and thereby also for the people of Australia by its actions.

The Greens also agree with these comments by the Law Council of Australia:

[3] Submission by the Law Council of Australia, Submission No. 52, p. 1.

> "The true situation about the government's stance on consultation is that it knows that its approach is over-bearing, intimidatory, discriminatory and designed for electoral consumption in parts of Australia far removed from the Northern Territory. It also knows that many elements of its emergency plan are not likely to be acceptable to the Aboriginal communities who identified the problem in the first place."[4]

This Dissenting Report by the Australian Greens is not as comprehensive as we would have liked, given we have not had the necessary time to adequately review the legislation.

The Majority Committee Report notes:

> Due to the unusually short timeframe allowed for consideration of the bills, the committee, the committee did not have access to a full Hansard transcript when preparing its report. The committee therefore presents the proof Hansard transcript of the hearing at Appendix 3 of the report to assist the Senate in its consideration of the Bill.

The Majority Report however falls short of the obvious conclusion that it is clearly not a satisfactory state of affairs when an inquiry is conducted under such a compressed timeframe that due process cannot be followed and the accuracy of its evidence considered.

***Racial Discrimination Act 1975***

The three Bills all state that the provisions of the Bills and acts done under the Bills are "special measures" for the purpose of the *Racial Discrimination Act 1975* (RDA). In addition to declaring the Bills "special measures," the Government has added an insurance policy by exempting the Bills from the operations of Part 2 of the RDA, effectively suspending the operation of the RDA.

The Australian Greens are in no doubt that the provisions of these Bill are racially discriminatory and cannot be characterised as "special measures," either under the RDA or in international law. It is of significance that this Government is prepared to suspend the operation of the RDA and introduce such explicitly racist legislation. This fact alone is reason enough for the Bills to be condemned and opposed.

Considerable concerns about the RDA were raised in the Senate Inquiry by a range of organisations including the Human Rights and Equal Opportunity Commission (HREOC) and the Law Council of Australia.

The significance of the RDA was summarised in HREOC's submission as follows:

> "The *Racial Discrimination Act 1975* (Cth) ('RDA') implements Australia's international obligations under the *Convention on the Elimination of All Forms*

[4] Submission by the Law Council of Australia, Submission No. 52, p. 2.

> *of Racial Discrimination* ('ICERD'). The RDA was Australia's first law to protect human rights and remains a cornerstone of human rights protection in Australia. Upholding the values of the RDA and ICERD is vital to ensuring community respect for government action and to maintain Australia's reputation as a nation committed to equality."[5]

The Law Council comments on the exclusion of the operation of the RDA as follows:

> "The Law Council considers the inclusion in legislation proposed to be enacted by the Australian Parliament in 2007 of a provision specifically excluding the operation of the RDA to be utterly unacceptable. Such an extraordinary development places Australia in direct and unashamed contravention of its obligations under relevant international instruments, most relevantly the United Nations Charter and the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). In addition to its status as a treaty obligation, contained in all major human rights instruments, the prohibition of racial discrimination has attained the status of customary international law, and has been characterised as one of the "least controversial examples of the class" of *jus cogens*. *Jus cogens* or peremptory norms of international law are overriding principles of international law, distinguished by their indelibility and non-derogability. They cannot be set aside by treaty or by acquiescence. Other "least controversial" examples of *jus cogens* include the prohibition of the use of force, the prohibitions of genocide, slavery and apartheid, and the principle of self-determination."[6]

In relation to the issue of whether the Bills constituted "special measures," HREOC expressed doubts and the Law Council of Australia specifically denied that the Bills constituted "special measures". Of particular significance in their submissions on this point is the reference to the need for consultation before a law can be considered a "special measure."

It is notable that the authors of the *Little Children are Sacred* Report have commented that there would be no need to exempt the RDA in implementing their recommendations.

**The Australian Greens do not consider that the provisions of the Bill are in fact "special measures" as we do not believe that they will lead to the advancement of Aboriginal people.**

***Northern Territory National Emergency Response Bill 2007*** **(NTNER Bill)**

<u>Land acquisition</u>
The NTNER Bill gives the Minister extraordinary powers over Aboriginal land in the Northern Territory. The NTNER Bill provides for:

[5] Submission of Human Rights and Equal Opportunity Commission, Submission No. 67, p. 4.

[6] Submission by the Law Council of Australia, Submission No. 52, p. 4.

- 5 year leases over specified land, including land prescribed in regulations at a later date,
- Commonwealth Ministerial powers over town camps and local councils;
- That the terms of conditions of the leases are at the Minister's discretion;
- That the Minister can terminate any rights, title or other interests in the land at any time;
- That the Commonwealth can sublease and licence their interest in the land.

Even more exceptionally, the Government is giving itself the power to amend Northern Territory legislation through regulation (including the Special Purposes Lease Act) and to exclude the operation of Commonwealth laws through regulation to acts done in relation to land acquired by the Commonwealth under the NTNER Bill, and to declare certain Divisions of the NTNER Bill will cease to have effect. These are extraordinary provisions. Under these provisions the Commonwealth could for example exclude the operation of the *Environmental Protection and Biodiversity Conservation Act 1999* to the land it acquires.

The Law Council of Australia responded that it was "speechless" at the legislation providing the Minister the power to change the legal framework and the legislation. The Law Council of Australia comments that:

> "These are examples of Henry VIII clauses, so-called because they enable the Minister, simply by a stroke of the pen, to change the legal framework. Henry VIII clauses are regarded as contrary to fundamental legal principles as they give insufficient regard to the institution of Parliament as the supreme legislature; they erode the function of the Parliament to legislate….
>
> … Thus it is the constitutional intention that all proposed Commonwealth legislation affecting the people of the Australia, a State or a Territory should proceed through the Parliament. It is the responsibility of Parliament to express the views, and represent the best interests, of the people. The assumption upon which democracy proceeds is that the people, through their elected representatives, exercise a measure of control, and indeed ultimate control, over legislation which is enacted in the Parliament. Thus an Act of Parliament ought to be changed only by another Act of Parliament."

Through these provisions the Commonwealth Government seeks to give itself exclusive possession over the land, which would give it the right to exclude anyone from the land - including the people living there.

The lack of protection of native title rights is a further example of the racially discriminatory nature of these provisions. Under the provisions of this Bill, all other rights in land are protected (unless terminated by the Minister) except for native title rights.

Despite creating 'leases' over the land through this legislation, there is no requirement within it for Commonwealth to pay rent for these leases. Rent becomes a matter entirely at the discretion of the Minister.

Compulsory acquisition of land and interest in land by the Commonwealth is a serious matter, so much so that our Constitution provides for "just terms" compensation. There remain real questions concerning the provisions in the NTNER Bill as to whether they in fact provide for "just terms" compensation or merely "reasonable compensation".

It would seem from the provisions of this Bill that rather than acting in good faith, the Government will force Indigenous communities to Court to determine whether "just terms" compensation should be paid. The Australian Greens are appalled that the Commonwealth would not provide for "just terms" compensation for acquiring Aboriginal land by force of law.

It became clear in the course of the Inquiry that there is at the very least confusion as to the intention and operation of the provisions relating to compensation.In respect to town camps, the Greens note the comments of Mr William Tilmouth, Executive Director of Tangentyere Council:

> "Tangentyere Council has tried to enter into meaningful discussions with the federal and Northern Territory governments about the future of those town camps, including addressing issues such as inadequate funding, infrastructure and management. Time and again, the government has attempted to lay down what it wants, meaning Aboriginal people have to give up control over land on which they live, the way in which they live and how they will manage their communities. We have been at the negotiating table for some time and we have agreed to give up our land for 20 years, provided that we have an ongoing role in management. But that has been rejected. It looks like we are going to lose our land forever. All attempts for us to negotiate on an equal basis have been rejected. This legislation is the final step in removing our land, dignity and humanity. It removes our right to consultation, participation, stability and security. The explanatory memorandum speaks of a stable and secure environment being required to eliminate child abuse. This legislation provides neither security nor stability. It only provides uncertainty, and it is unclear how the act will work."[7]

The Greens have obtained legal advice indicated a legal challenge to the compensation provisions could have wide ranging effects on the validity of large parts of the NTNER Bill. The compensation provisions should be amended to make clear that "just compensation" is payable for the interests acquired in the land, and is not to be determined by offsetting improvements on the land.

The breadth of powers given to the Commonwealth over Aboriginal land is extraordinary and unnecessary. The Commonwealth Government has not provided a

[7] Hansard, p. 13.

sufficient explanation of why this level of control of land is necessary to protect children. There has been no attempt to substantiate a link between land tenure and child abuse.

In his briefing paper for Oxfam Australia, *"The 'National Emergency' and Land Right Reform: Separating fact from fiction",* Jon Altman, argues convincingly that there is:

> "…no evidence of any direct link between the compulsory acquisition of five year leases over prescribed townships and the problems of child abuse and dysfunction in aboriginal communities in the Northern Territory."[8]

The Australian Greens support the argument that:

> "Historically it is clear that traditional owners of townships have been disadvantaged by colonial administrations allowing the location of government settlements and missions at these locations without traditional owner consent. This new compulsory acquisition measure also disempowers traditional owners of townships. In so far as land ownership constitutes a form of property right, this measure will also economically disadvantage current and future generations of traditional owners."[9]

These provisions leave Aboriginal communities powerless in respect of their land including potentially the ability to remain living on their land. This is unacceptable.

For similar reasons the Australian Greens oppose the dismantling of the permit system. Our comments on the changes to permits are outlined below in relation to the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007.*

A proper policy approach would dictate restraint on the powers of the Government over the lives of people and, if the purpose of the policy was not being met, a return to the Parliament to make the case for extra powers. This Government has turned this approach on its head by legislating extraordinary powers for itself upfront which trample the rights of Aboriginal Australians.

**The Australian Greens do not support the compulsory acquisition of Aboriginal land or the extensive powers provided to the Commonwealth Minister.**

<u>Business Management Areas</u>

The provisions relating to Business Management Areas provide for a substantial and we believe unnecessary level of interference and control in the affairs of communities, organisations and individuals.

The measures provide that the Commonwealth can:

- Unilaterally vary funding agreements;

[8] Attachment to Submission by Oxfam Australia, Submission No. 51, p.14.

[9] Attachment to Submission by Oxfam Australia, Submission No. 51, p.9.

- Direct services and use of assets where funding has been provided by the Commonwealth or Northern Territory governments that could be used to provide a service.
- Appoint observers in a community who are entitled to attend and participate in meetings (bot not to vote); and
- Appoint a statutory manager to administer the affairs of an association if the association is given government finding that could be used to provide services.

Of particular concern is the breadth of these provisions. The Minister can direct services or the use of assets in circumstances where the entity providing the service or in possession of the asset is funded by either the Commonwealth or Northern Territory governments and that funding could be used to provide the service. There is no need for a direct link between the government funding and the service or asset being directed, that is the government need not fund the service or asset being directed. There is a very real concern that these provisions will capture volunteer work in communities as well.

The provisions relating to the appointment of observers are extraordinary. A community or organisation does not have to be in receipt of government funds for the government to appoint an observer who, by force of law and backed by civil penalty provisions, can attend all meetings or deliberations of the organisation.

**The Greens find these invidious powers unacceptable and cannot support such measures.**

Bail and Sentencing

The Greens do not support the blanket prohibition on courts considering customary law or cultural practices in bail applications and conditions and in sentencing. These provisions limit the discretion of the court as to potentially relevant considerations to be taken into account and are therefore a denial of justice.

The Greens agree with the comment of the Law Council of Australia as follows:

> "As argued in the Law Council's earlier submissions on this issue, Part 6, if implemented, will (among other things):
>
> • require courts to treat Aboriginal and Torres Strait Islanders, and those of different ethnic origins, as if they did not belong to a specific cultural group;
>
> • result in more Aboriginal people being incarcerated, for longer periods and with fewer options for rehabilitation within their communities; and
>
> • undermine the positive achievements of Aboriginal courts, which have relied on flexible sentencing and bail options and community involvement to strengthen compliance with the law, Aboriginal communality and leadership and, ultimately, reduce rates of imprisonment and recidivism."[10]

[10] Submission by the Law Council of Australia, Submission No. 52, pp. 12-13.

Alcohol

There is no question that alcohol and substance abuse contribute to poor child health and safety outcomes in Indigenous communities. The *Little Children are Sacred* Report identified alcohol abuse as an important factor to be addressed in reducing child sexual abuse.

The Australian Greens are not opposed to tougher restrictions on alcohol as part of a strategy to deal with alcohol abuse issues.

However, the Greens are concerned that the imposition of a law-and-order approach to banning alcohol on Aboriginal communities will prove ineffective and could increase the levels of violence and abuse - particularly if it isn't backed up by rehabilitation and counselling programs, and isn't part of a strategy that also tackles the problems in the larger regional centres.

The Greens are also concerned that there was no additional funding for rehabilitation and counselling included in the Bills, despite the clear evidence presented to the committee that existing levels of funding are inadequate to deal with the scale of the problem and the level of unmet need.

Concern was also raised in the Inquiry about possible unintended consequences of these measures such as increased incarceration of Indigenous people, including through not being able to pay fines particularly with income support being quarantined.[11]

Publicly funded computers

The provisions relating to "publicly funded computers" provide that the responsible person must:

- Install an accredited filter;
- Keep records of persons who use computer and the day and times of that use;
- Develop an acceptable use policy which states that a person must not use the computer to send anonymous or repeated communications designed to annoy or torment, or access, or send a communication containing, material or a statement that:
    - contravenes a law of the Commonwealth, a State or a Territory;
    - incites a person to contravene Commonwealth, a State or a Territory;
    - that si slanderous, libellous or defamatory;
    - that is offensive or obscene;
    - that is abusive or threatens the use of violence; or
    - that harasses another person on the basis of sex, race, disability, or any other protected status; and
- Audit the computer and give results of the audit to Australian Crime Commission.

[11] Submission of Human Rights and Equal Opportunity Commission, Submission No. 67, p. 14.

It is important to note that the definition of a "publicly funded computer" is very broad and is not limited to a computer that is actually purchased with government money or is used in the provision of a service funded by the government. The definition includes a computer that is owned or leased or in the possession of somebody who receives government funding and is in a prescribed area.

So these provisions can cover computers bought with private funds and not used in any way related to the provision of government funds. Indeed the phrase "government funded computer" is misleading.

The Greens believe the requirements placed on the responsible person in these circumstances are too onerous and are not the most effective means of addressing the key problem of accessing pornography over the internet.

We also note the requirement of the responsible person to have sufficient knowledge of the law to know when a computer is being used to commit a range of offences from slander and libel to offensive and obscene statement to harassment. We believe these represent unreasonable obligations, particularly given civil penalty provisions.

***Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007***

Prohibited Material

The Greens support introducing further restrictions on prohibited material, although we have some concerns with the detail of these provisions. We are particularly concerned that there is potential for people to be innocently caught by these provisions, for example for inadvertently receiving explicit material sent in a 'spam' email or clicking on an ambiguous or deceptive html link.

Australian Crime Commission

The Australian Greens understand the amendments to the *Australian Crimes Commission Act* gives the Crimes Commission the same powers to investigate violence on Indigenous communities as the Commission has to investigate organised crime. These powers include covert surveillance and compelling people to give evidence. The Australian Crime Commission's Annual Report 2005-06 notes in relation to its special powers:

> "The ACC has a range of special coercive powers that are instrumental in combating serious and organised crime. These powers are often used when ordinary law enforcement methodologies prove ineffective in combating sophisticated criminal activity ….. The special coercive powers include the ability to summons a person to an examination to give evidence under oath or affirmation and the power to demand documents. Failure to comply is punishable with fines and imprisonment."

It is extraordinary for the Government to target Indigenous communities with these sorts of powers. Child abuse and violence in families occurs throughout Australia.

What possible justification is there for targeting Indigenous communities with these sorts of police powers?

At the Inquiry, the Law Council of Australia commented that it had previously raised concerns about proposals to extend Australian Crime Commission powers to investigating sexual crimes and violent crimes in Aboriginal communities:

> "The chief concerns that we raised were that the powers that the Australian Crime Commission has are not very well adapted to that kind of an investigation. We understand that the Australian Crime Commission largely deals—and quite effectively deals—with investigations against organised crime in urban areas and those sorts of much more organised and much more sophisticated kinds of criminal networks. We are talking about crimes in small communities where there has not been any indication or proof that there are any kinds of crime rings occurring. There is a real sense that these powers may be used or misused to intimidate to the detriment of the communities that they are supposed to be helping."[12]

It is extraordinary that the Government believes such extensive powers are needed in these circumstances. The Greens support the need for an increased and sustained police presence in Indigenous communities but we also recognise that in attempting to break the cycle of violence in some of these communities law enforcement officers need to gain the trust of the community. These sorts of powers will have the opposite effect.

**The Australian Greens do not support these discriminatory and disproportionate measures.**

Permits

The Australian Greens are opposed to the partial dismantling of the permit system over Aboriginal land in the Northern Territory. The permit system is important in giving Aboriginal people some control over their land and in offering a measure of protection against grog runners, carpet baggers, paedophiles and other criminal elements.

It is significant that there is no reference to land tenure or the permit system in the *Little Children are Sacred* Report.

In the Oxfam paper, *"The 'National Emergency' and Land Right Reform: Separating fact from fiction"*, Jon Altman outlines the Government's development of its proposals concerning the permit system and how they predate the *Little Children are Sacred* report.[13]

The Australian Greens are very concerned that the government is using child abuse as a pretext to implement a policy agenda which will not only do nothing to stop child

[12] Hansard, p. 67.

[13] Attachment to Submission by Oxfam Australia, Submission No. 51.

abuse, but in fact may prove detrimental to the safety and well-being of children in these communities. There is no evidence that there is a relationship between the permit system and child abuse.

The Greens are not convinced that the dismantling of the permit system is necessary to achieve increased accountability and openness of communities, as is claimed by the Government.

From the evidence presented by those with lived and practical experience in Aboriginal communities in the Northern Territory, the permit system does not impede service delivery to communities, prevent media scrutiny or stop economic development. In fact the recent Senate Inquiry into Indigenous Art heard evidence that the permit system is vital in ensuring the economic benefits from their art is enjoyed by the communities that produce the art.

Importantly, the Northern Territory police acknowledge that the permit system assists them and communities to enforce alcohol bans and regulate visitation to communities by outsiders.

The Central Land Council submission quotes the NT Police Association President Vince Kelly:

> "The Federal Government has failed to make a case in my view, about the connection between sexual assault in Indigenous communities and the permit system. These communities aren't like anywhere else in Australia; otherwise the Federal Government wouldn't be intervening in this matter. So to simply roll up the permit system I think is going to lead to problems that have probably been identified by Indigenous people around the Northern Territory".[14]

It is unclear how the partial abolition of the permit system will operate in practice. The definition of "common area" is inadequately defined, and this ambiguity is unacceptable in these circumstances. For example, how will the distinction between common and private areas be determined and policed? How will townships and access to roads be policed so that people do not wander off into sacred sites?

While the legislation provides only for a partial dismantling of the permit system, the legislation will effectively dismantle the whole system, because it is likely to prove impossible for the police to control access to the areas represented by the remainder of the permit system

It became quite clear in the course of the Inquiry that there was little support for dismantling the permit system and indeed that these provisions would create more potential for harm to occur to children in communities.

[14] Submission by Central Land Council, Submission No. 84, p. 3.

**The Australian Greens oppose this dismantling of the permit system and the contempt shown by this Government for the land rights of Indigenous peoples in the Northern Territory.**

***Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007*** **(Social Security Bill)**

The amendments to the social security legislation, taken together with the Welfare to Work legislation, are reshaping the very basis of our welfare system and moving it to a punitive and paternalistic system, which is based much more on ideology than it is on any kind of evidence-based policy.

Northern Territory provisions

The Australian Greens are in no doubt that the measures in the Social Security Bill breach the RDA and cannot be characterised as "special measures". This is particularly the case given the arbitrary nature of the operation of income management in a "relevant Northern Territory area," and the denial of appeal rights to those covered by this part of the income management regime.

The notion that these provisions are for the benefit of children are undermined by the fact that a person does not have to have responsibility for a child to be subject to income management in the Northern Territory. All they have to do is simply spend a night in a designated area.

The measures have nothing to do with how a person currently spends their money or how well they look after their children. The arbitrary nature of this regime defies belief. This law condemns the whole for the behaviour of a few, and is akin to guilt by association. This is an extraordinary measure to see in Australian law.

The Government clearly determined that it was too difficult to target individuals in Aboriginal communities in the Northern Territory and deal with their known mobility, and so have developed this extraordinary provision that places people onto income support if they spend a single night in a designated area. A person may have no problems managing their finances, may not spend any money on grog, and may look after their children in an exemplary fashion … and yet simply because they live in a designated area they will be subject to having 50% of any income support or family tax benefit they receive being quarantined.

It is easy to imagine circumstances under which a person who lives somewhere else and goes to visit a family member in a designated area and be caught in this regime. A tourist on a pension might visit a designated community overnight and conceivably become to subject to income management.

The ability to receive an exemption is not sufficient. The Government has this around the wrong way. Individuals should not have to be exempted from this kind of regime, but rather the regime should only apply to individuals based on specific relevant criteria. Furthermore, the denial of appeal rights for those who spend a night in a

designated area in the Northern Territory mean that these exemption provisions are fundamentally flawed.

The denial of appeal rights in circumstances of such arbitrariness is unjustified, racist and obscene.

The Greens support the comments of the submission of the National Welfare Rights Network on this issue:

> "The right to appeal has always been a fundamental protection for Social Security recipients against bureaucratic neglect and error. However, the Government intends to remove the rights to external appeal to the Social Security Appeals Tribunal (SSAT) for Northern Territorians who are subject to the Income Management of their welfare payments. This sets a very dangerous precedent to strip away this protection for an entire group of Australians based solely on where they live. These decisions could have huge implications for families.
>
> The Minister states that the alternative is to appeal to the Federal Court. This would require a barrister, enormous expense, the risk of paying the Government's costs and has a 28 day appeal limit.
>
> A person would also have to know how to fill in an application for the Federal Court, and there is a scarcity of free legal assistance in the NT, with only one Legal Aid Office and only one generalist Community Legal Centre.
>
> It is difficult to accept the Government's rationale as to why Indigenous communities in the Northern Territory are to be denied access to independent review of decisions relating to the quarantining of welfare payments when other Australians in other parts of the country will be able to exercise their full appeal rights."[15]

It is also important to note the distinction between an arbitrary Northern Territory regime and the Cape York regime - which is more community-based, and applies on an individual basis rather than targeting entire communities. This is a fundamental difference that belies the Government's claim to be implementing the regime proposed for Cape York.

A number of submissions have remarked on the potential for this regime and the other aspects of the Intervention to result in the movement of people out of communities and into the towns. This could put unsustainable pressures onto these towns. The impacts of these measures need to be carefully monitored to ensure they do not have these kind of unintended deleterious consequences.

Another potential effect of these measure is increasing numbers of people dropping out of the welfare system altogether and increasing financial strain on the limited

[15] Submission of National Welfare Rights Network, Submission No. 44, p.3.

resources of associated family members. Such outcomes cannot be considered to be assisting to protect the health and welfare of children.

Commonwealth Development Employment Program (CDEP)

There were also a number of submissions which commented on the implications of ending the CDEP system and moving Aboriginal people in the Northern Territory into unemployment and onto Work for the Dole.

Concerns were raised including the likelihood of many Aboriginal people, particularly those in remote communities, being unable to comply with the participation requirements therefore leading to even higher rates of 8 week non-payment periods for these people.[16]

The effects of the removal of CDEP on communities and their services was also raised in the Inquiry. HREOC noted that:

> "Many communities rely on the CDEP program to provide essential services, some of which are critical to improving law and order or the health of the community, such as night patrols, nutritional programs, garbage collection and sanitation programs."[17]

The Government has already acknowledged that only 2000 "real" jobs can be created, while there are 7000 Indigenous people on CDEP in the Northern Territory. Poverty is one of the key factors related to child abuse in Indigenous communities and the appalling health standards in some of these communities. These measures will only entrench poverty and do nothing to assist violence, abuse and health concerns.

Furthermore, the Greens question the Government's commitment to deliver greater opportunities or better outcomes for those on CDEP when they have provided for a reduction in the CDEP appropriation of $76 million and an appropriation of only $ 46.9 million for additional income support.[18] This effectively represents $30 million that is being taken out of Aboriginal communities in employment and training opportunities and in take home pay that can contribute to the health and well-being of Aboriginal children.

Income management regime in the broader Australian community

The Australian Greens are opposed to the income management regime in its entirety, and we also have some specific concerns with the detail in the Social Security Bill. We fail to understand how the quarantining of 100% of social security payments will advance the stated objectives of the Government.

The Greens agree with the Australian Council of Social Services (ACOSS) that the causes of the social problems that the Bill is seeking to address are complex, and that

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[16] Submission of National Welfare Rights Network, Submission No. 44, pp. 4-5.

[17] Submission of Human Rights and Equal Opportunity Commission, Submission No. 67, p. 9.

[18] Hansard, p. 6 and Answer to Question on Notice No. 59.

the income management regime "is unlikely to contribute to solutions but would in a number of ways contribute to the underlying problems."

As ACOSS says:

> "There is no evidence to suggest that making school attendance a condition of receipt of income support would actually improve attendance. Parents want their children to attend school but in cases of truancy they are often unable to enforce this without intensive and consistent support from the school, their families ad other services…
>
> …Similarly, Income Management is unlikely to prevent child abuse or neglect. The Government acknowledges that only ' a few thousand' families across Australia would be affected by Income Management as a result of notifications by state Welfare Authorities. Since the causes of child abuse and neglect are complex and multidimensional, single intervention will be ineffective and interventions such as quarantining welfare payments, which do not address causal factors, are the wrong place to start."

The Greens also agree with ACOSS that a top-down approach will prove ineffective, and that as a community we need to be empowering people to take responsibility:

> "Whatever system we have, it has to empower people to take responsibility for their own finances, for their own lives, for their own children and for their own communities. I think it is extremely unlikely that you will get those outcomes if you impose from above, particularly if people are not consulted about how best that should be done. If we are to have a compulsory system then the absolutely crucial thing is that the casework, the support workers and the services that are required—and also the specialist services that people will need—assist people to learn how to do these things for themselves, rather than being dependent on a government making decisions for them. For example, if people are not spending their money on food because of drug and alcohol abuse—and I think this is an extremely questionable proposition, but let us say for the moment that that is the case—they will not stop, they will not learn how to do things differently, unless there are intensive and ongoing drug and alcohol rehabilitation services for them. And there is no mention of services such as those in the proposals that have been put forward."[19]

Like the other Bills, the Social Security Bill leaves too much detail to the regulations and Ministerial discretion - including designating school areas and child protection areas, and the guidelines for defining school attendance. Aboriginal communities have also raised concern with the ability of existing schools to cope with increased school attendance.

It is also notable that the Government has yet to comprehensively consult with the State and Territory Governments or reach agreement on how the school enrolment,

[19] Hansard, p. 60.

school attendance and child protection triggers for income management will operate in practice.

The Australian Greens are concerned with the Ministerial power to designate school areas to the extent of designating individual schools. What criteria will be used to determine which schools and therefore which parents should be captured by this scheme, and which ones will not be captured?

We are also concerned with the retrospective nature of the Social Security Bill, capturing behaviour prior to the legislation becoming law. Retrospectivity is always to be avoided where possible.

The power for government departments to obtain and share personal information is also a concern. There are significant privacy issues with allowing government agencies to share information with school authorities.

How the system will be administered is also of grave concern to the Greens. The legislation raises many questions:

- What criteria will be used to determine which payment method is used? Will that be at the discretion of the Centrelink or other relevant agency officer?
- How is the Secretary or their delegate to become aware of a person's "priority needs" and what is a reasonable period to take action to meet those needs?
- How will the Secretary or their delegates be satisfied a person will not use the money or credit to acquire excluded goods and services?

We are very concerned about the ability of Centrelink or any other agency to adequately and efficiently become the financial managers for people caught in this system. For example, what happens if a utility bill is not paid by Centrelink or the relevant agency and a person's electricity, gas or phone is disconnected? What happens if there is not enough credit in a person's income management account to meet their "priority needs"?

The Australian Greens note with interest the questions asked by ACOSS in their submission concerning the administration of this system, and also note the answers to those questions provided by FaCSIA. We do not believe that the answers provided by FaCSIA are satisfactory, and uncertainty remains as to how the income management regime will actually work in practice.

The resources required to administer such a system will be large while the potential for benefits small. We note that in response to questions about the likely cost of administering the intervention during the inquiry FaCSIA indicated that the estimated cost for administering the income management regime within the Northern Territory for this year alone was $88 million.

At the Inquiry, Professor Altman referred to recent research by Professor David Ribar, an American economist currently visiting the Australian National University who notes that the United States of America's measures to control the spending of welfare

payments have had a high cost and limited benefits. Professor Altman noted that "In particular, [Professor Ribar] highlights the issues of fixed establishment costs and diseconomies of small scale in the proposed Australian measures. In the USA, such measures are applied to 26.7 million people. In Australia we are talking initially of 30,000 to 40,000 Indigenous people in 73 dispersed communities."[20]

The Greens are also concerned about the likelihood of resources being taken away from proven programs and measures, such as case workers and support workers, into the administration of this scheme.

The Greens believe it is unacceptable that if the government "overspends", the person through no fault of their own now have a debt to the Commonwealth. Furthermore it is also unacceptable for credit in an account once a person is off income management to be paid to that person in instalments over a12 month period or kept if Centrelink believes the person will be subject to income management again within 60 days. Once a person has satisfied the criteria and is no longer caught by the regime their money should be returned directly.

Once again we are seeing inconsistency in how shared parenting arrangements are treated. While only one parent can only receive the parenting payment, for the school enrolment, school attendance and child protection triggers, parents, including in shared parenting arrangements a parent with at least 14 % of time, are caught by income management.

The Greens are also very concerned about how the voucher and credit systems will operate. Will the Government for example enter into contracts with particular providers therefore limiting the choice for people as consumers and creating a cartel for the poor?

The Greens are also concerned to know whether the Government intends to outsource the administration of this scheme to private providers, like the job network. As ACOSS notes, "This raises issues of accountability to parliament for the exercise of considerable discretion over the use of income support payments that will apply."[21]

Baby bonus

The Social Security Bill provides that people on income management will get baby bonus in 13 instalments. However, the provisions also allow the Minister to specify in a legislative instrument other classes of individuals who are to receive the baby bonus in instalments. We will be watching any use of this power very closely.

## Appropriations

There is no question that significant funds are needed to address problems facing Indigenous communities in the Northern Territory - including housing, health,

[20] Hansard, p. 78.

[21] Hansard, p. 59.

education and child protection. It is clear that there are significant amounts of money being made available by the Commonwealth to address these issues.

The Australian Greens have considerable concerns about the appropriations for these Bills. It is worrying that such a significant amount of the $587m is being used on the bureaucracy and in administration. It is also of concern that the Government is not appropriating specific amounts for rent or compensation in relation to the 5 year leases, and has not budgeted for the measures beyond 30 July 2008.

It is notable that none of the $587m will be used to address the chronic shortage of housing in Indigenous communities (both remote communities and in the towns) that is a key element in preventing child sexual abuse.

The Greens agree with the Combined Aboriginal Organisations of the Northern Territory that:

> "there should be comprehensive plan, fully costed, with financial commitments that addresses the underlying causes within a specific time frame, and mechanisms that would ensure transparency and ongoing independent, rigorous evaluation."[22]

**Conclusion**

For all the reasons outlined above the Australian Greens object to and will be opposing these Bills.

All three Bills should be withdrawn and the Government should rethink its intervention package and consult with the community.

In the meantime, the Government should begin to implement the 97 recommendations from the *Little Children are Scared* Report, including addressing the vital needs of housing, health and education.

The Government clearly has the money to start providing housing, education and health services which are the matters of urgent concern in Indigenous communities.

*Senator Rachel Siewert*
Australian Greens

[22] Hansard, p. 17.